

Minutes
Criminal Justice Collaborating Counsel
Alcohol Treatment Court Subcommittee
Wednesday, September 10, 2008

Judge Foster called the meeting to order at 12:20 p.m.

Subcommittee Members Present: Judge Kathryn Foster (Chair), Dan Fay, Mike DeMars, Melissa Emberts, Andrea Wolf, Diane Keslner, Ray Cunneen, Lindsay Desormier, Karl Held, Kristy Gusse, Judge Lee Dreyfus, Jean LaTour.

Also Present: Dick Manke.

Correspondence

Foster talked about a state committee she is serving on which is focusing on drunk driving. The committee includes defense attorneys, law enforcement, members of the tavern league, DOT, probation and parole, etc. The group will center on the increased use of interlock ignition devices. She believes the committee will recommend use of the device for all offenses.

Foster commended Wolff and Gusse for the excellent job they did planning the ATC graduation on August 14. There was an excellent turn out consisting of graduates, media, county board supervisors, county staff, etc.

Discuss Modifications to Current Participant Handbook

Foster said there are some items in the current participant handbook that need to be tightened and institutionalized.

Foster said there are people eligible for participation in ATC with a third offense pending and who receive a fourth OWI before being punished and sentenced. If all other criteria are met, should we consider modifying eligibility of the program to include these people? The change would provide more discretion for the treatment court judge. Schimel is not opposed to making this subset of individuals eligible for the program. Fay said the program could be a condition of probation for fourth offenders. Foster said the original plan when the program was developed was to target fourth time offenders. The plan changed to third time offenders when the grant was secured.

Dreyfus said are we presuming the legislature will make fourth OWI offenses felonies this winter. In some respects waiving third offenses is probably too late. Do we need to look at second time offenders? It would quadruple the program numbers and other needs.

Foster said ninety-five percent of third-time OWI offenders are assessed as alcohol addicted and most likely to offend again. The majority of offenders are second time. People in Huber who have less than 120 days to serve won't do the program because it is easier for them to stay in jail.

Foster said there needs to be an institutionalizing notice in the handbook allowing post graduates to get their driving privileges back after 24 months of revocation if they have not had any OARs and they continue to attend the after care program at HHS. The interlock devices could be taken off early if participants can show two years of sobriety and want to continue in after care.

Foster said the handbook needs to include language about excuses for positive tests due to the use of substances such as Nyquil. Dreyfus said he sees positive test results pre-judgment. He does not remember

anyone in the last six months using that excuse. Wolff said one person used it in the last year. People are told in intake not to use Nyquil as a reason/excuse for a positive test.

Wolff said the ETG test can tell whether or not clients have consumed alcohol within the past 80 hours. It's a good test for participants who miss a regular test. LaTour said when people miss a urine screen, they are told there's a reason they missed their test. The ETG shows that everyone makes mistakes and misses appointments and can still be clean. It is a good reminder not to miss their color. Dreyfus said ETG is helpful for people who will be out of town for a week. With the test, we can be reasonably confident they weren't consuming.

Wolff said this needs to be added to the handbook along with the fact that participants are responsible for the cost of the test (\$40). LaTour said participants need to know it's not a constant option.

LaTour volunteered to work with WCS staff to draft the amendments to the handbook.

MOTION: Fay moved, LaTour second, to consider program eligibility for third time OWI offenders with a fourth offense pending if participants meet all other eligibility requirements. Motion carried 9-0.

MOTION: LaTour moved, Fay second, to amend the current participant handbook to include a reduction in license revocation for post graduates who are in compliance with support group meeting attendance at HHS one time per month, have no operating after revocations and at the discretion of the judge. Motion carried 9-0.

Program Update

Emberts said she received the disk from Waukesha County that WCS's IT department needed. The system is functioning and able to produce a variety of reports from a combined WCS/Waukesha County system. As the program evolves, changes can be made more quickly and efficiently.

Wolff said the current caseload is 44. Year-to-date there have been 59 participants and nine graduates. One hundred and ten people have participated in the program since its inception. Last month there were five new participants and three graduates. In August there were 12 participants in phase one, 13 in phase two, 13 in phase three and seven in phase four. One application will be reviewed this week. Wolff said there are three people on probation.

Discuss Criterion to Accept Fourth Time Offenders into Program

Foster said Schimel is putting together a CJCC subgroup to investigate accepting fourth time OWI offenders into the program. The legislature could make changes to OWI sentencing when they return to session. Dreyfus said even if the state legislature makes fourth offense OWIs a felony, a large number of offenders will not go to prison. Probation may be utilized instead unless the legislature makes prison mandatory. If fourth time offenders don't go to prison, ATC will be valuable to them.

Emberts said fourth time offenders are assessed a lot in the day reporting program. A lot of them are not on probation. A few have shown interest in entering the program. Dreyfus said for some the last offense was so long ago, they won't be eligible for the programs. Fay said the plan will be a tough sell statewide among judges. How the plan can be marketed to the judges? Foster said she and Dreyfus can talk to the other judges.

Foster said from the discussion it appears the committee wants to go forward with the consideration regardless of what the legislature decides to do. LaTour, Fay and Emberts volunteered to be a part of the subcommittee Schimel is developing.

Held said the judges are seeing the offender would gain more by getting jail time versus probation. Dreyfus said it is easy to put people in jail but it doesn't help the issue long term. On the other side nothing has been successful treating their problem. The longer we can monitor sobriety, the better chance they have of making it. It is hard to measure success down the road.

Foster said probation and parole conflicts with the treatment model. In probation and parole, offenders receive several warnings before the plug is pulled. In treatment court, violators are sanctioned for their first violation. Held said it is more of an element of jail crowding. Fay said ATC has to be a condition of probation and the judge determines the violations. Dreyfus said in ATC, we have the ability to see participants every week. He doesn't think Probation and Parole has the staffing to do that. Held said probation officers can't see clients more than once a month or once every three months. It is designated in their probation how often clients need to see a probation officer.

Sustainability: 2009 – 2010 Budget Discussion

Foster recommended having a graduate panel make a presentation about ATC to the entire county board. Desormier volunteered to speak to the board.

Future Agenda Items

- Fourth offenses.
- Adding a graduate(s) to the advisory committee.

Next Meeting Date

- November 5th at 12:15 pm.

The meeting adjourned at 1:20 p.m.